2022

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2022

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2022 REGULAR SESSION
OF THE LEGISLATURE

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 22A

Title 99 (Chapter 20 to end)

(As Revised 2020)

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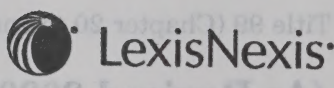

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2022 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2022 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 4th Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2022 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2022 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 99. Criminal Procedure

CHAPTER 25. Forms

SEC.	
99-25-16.	Affidavit to obtain search warrant upon oral testimony for computer crime investigations of sex offenses against children.

SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 99. Criminal Procedure

CHAPTER 25. Forms

Sec.

99-25-10. Affidavit to obtain search warrant upon oral testimony for complete crime investigations of sex offenses against children.

MISSISSIPPI CODE
1972
ANNOTATED

VOLUME TWENTY TWO-A

TITLE 99.
CRIMINAL PROCEDURE

Chapter 25. Forms. 99-25-1

CHAPTER 25.
FORMS

Sec.
99-25-16. Affidavit to obtain search warrant upon oral testimony for computer crime investigations of sex offenses against children.

§ 99-25-16. Affidavit to obtain search warrant upon oral testimony for computer crime investigations of sex offenses against children.

(1) The provisions of this section shall only apply to search warrants issued in relation to computer crime investigations for sex offenses against children who are less than eighteen (18) years old involving a computer defined in Section 7-5-59(1)(a).

(2) If circumstances make it reasonable to dispense, in whole or in part, with a written affidavit, a judge who is authorized to issue search warrants may issue a warrant based upon sworn testimony communicated by telephone or other appropriate means, including facsimile transmission.

(3) The person who is requesting the warrant shall prepare a document to be known as a "duplicate original warrant" and shall read such duplicate original warrant verbatim to the issuing judge. The judge shall enter what is so read on a document to be known as the "original warrant." The issuing judge may direct that the warrant be modified.

(4) If the judge is satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit and the grounds for the application exist or that there is probable cause to believe that they exist, the judge shall order the issuance of a warrant by directing the person requesting the warrant to sign the judge's name on the duplicate original warrant. The judge shall immediately sign the original warrant and enter on the face of the original warrant the exact time the warrant was ordered to be issued. The

finding of probable cause for a warrant upon oral testimony may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

(5) When a telephone caller informs the judge that the purpose of the telephone call is to request a warrant, the judge shall immediately place under oath each person whose testimony forms a basis of the application and each person applying for the warrant. The judge shall record by electronic means or a voice recording device the call after the caller informs the judge that the purpose of the call is to request a warrant. Following the call, the judge shall have the recording transcribed, shall certify the accuracy of the transcript and shall file a copy of the recording and transcript with the court.

(6) The contents of a warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.

(7) The person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant.

HISTORY: Laws, 2022, ch. 424, § 1, eff from and after July 1, 2022.

Cross References — For affidavit to obtain search warrant upon oral testimony for computer crime investigations of sex offenses against children, see § 7-5-59.

CHAPTER 35.

APPEALS

ARTICLE 3.

APPEALS TO SUPREME COURT AND RELATED PROCEDURES.

§ 99-35-101. Right of appeal.

JUDICIAL DECISIONS

5. Plea of guilty, effect of.

Appellant's filings for an order to show cause were successive motions for post-conviction relief, and thus, the circuit court lacked jurisdiction to consider them; because appellant pleaded guilty and could not directly appeal his convictions and sentences, the supreme court would not have jurisdiction to consider any applications for leave to proceed in the trial court. Nance v. State, 327 So. 3d 1089, 2021 Miss. App. LEXIS 389 (Miss. Ct. App. 2021).

§ 99-35-115. Bail after conviction of felony; application for emergency hearing upon denial of bail.

JUDICIAL DECISIONS

3. Denial of bond.

Circuit court correctly denied defendant's request to be released on bail pending appeal because it found that he failed to prove that his release would not constitute a special danger to another person or

to the community. Defendant was "the mastermind" of the 2015 and 2018 burglaries and that he recruited people to do this crime, he gave the instructions when to go, and he talked his co-defendants through it. Wofford v. State, — So. 3d —, 2022 Miss. App. LEXIS 137 (Miss. Ct. App. May 3, 2022).

CHAPTER 37.

RESTITUTION TO VICTIMS OF CRIMES

§ 99-37-3. Imposition and amount of restitution.

JUDICIAL DECISIONS

2. Illustrative cases.

Following defendant's conviction for embezzling an amount in excess of $25,000, the trial court did not abuse its discretion by sentencing defendant to serve 20 years in the custody of the Mississippi Department of Corrections and by ordering defendant to pay restitution because the term of the sentence which the court imposed was within the statutorily prescribed limits and the evidence supported the amount of the award of restitution for the funds which defendant embezzled from defendant's employer. Russell v. State, — So. 3d —, 2021 Miss. App. LEXIS 57 (Miss. Ct. App. Feb. 2, 2021), cert. denied, 321 So. 3d 564, 2021 Miss. LEXIS 205 (Miss. 2021).

Restitution order was improper because the record was silent as to how the trial court arrived at $6,500 for the restitution amount and there was nothing in the record that indicated that defendant was provided an opportunity to review and/or object to the restitution required. Turner v. State, 291 So. 3d 376, 2020 Miss. App. LEXIS 21 (Miss. Ct. App. 2020).

CHAPTER 39.

POST-CONVICTION PROCEEDINGS

ARTICLE 1.

MISSISSIPPI UNIFORM POST-CONVICTION COLLATERAL RELIEF ACT.

§ 99-39-5. Grounds for relief; time limitations; "biological evidence" defined.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
5. Ineffective assistance of counsel.
7. Newly discovered evidence.
11. Timeliness.
12. Successive writs.
15. Double jeopardy.

1. In general.

Court of appeals addressed the merits of appellant's claim even though his post-conviction relief motion was not filed within the three-year statute of limitations of the Uniform Post-Conviction Collateral Relief Act because appellant contended that the State's failure to prove

beyond a reasonable doubt that his prior convictions arose from separate incidents at different times subjected him to an illegal sentence as a habitual offender. Jones v. State, 304 So. 3d 702, 2020 Miss. App. LEXIS 569 (Miss. Ct. App. 2020).

Because petitioner appealed his conviction, he had to petition the Mississippi Supreme Court for leave to file a postconviction relief motion, which action had to be taken within three years of the final decision on petitioner's appeal. Mosley v. State, 307 So. 3d 1261, 2020 Miss. App. LEXIS 678 (Miss. Ct. App. 2020).

5. Ineffective assistance of counsel.

Appellant's postconviction relief motion was properly denied because it was of no fault of his trial attorneys that the codefendants changed their story years later, after appellant's conviction. Given that the statements only addressed the events that led to the victim's death, appellant did not show that he would have insisted on a trial but for his allegedly ineffective assistance of counsel. Pipkin v. State, — So. 3d —, 2022 Miss. App. LEXIS 172 (Miss. Ct. App. May 24, 2022).

Circuit court did not err or abuse its discretion when it denied petitioner's post-conviction relief because he did not file the petition within three years of the entry of the judgment of conviction and it was, therefore, time-barred. Petitioner failed to show that his claim should be excepted from the time-bar because his ineffective assistance of counsel claim was based upon psychological evaluations that were prepared and available before the date of his conviction. Klis v. State, 339 So. 3d 187, 2022 Miss. App. LEXIS 173 (Miss. Ct. App. 2022).

Circuit court did not abuse its discretion in dismissing appellant's postconviction relief motions because defendant did not receive ineffective assistance of counsel (as an exception to the timeliness procedural bar) for having failed to interview the affiants because two of the affidavits were signed 20 years before appellant's release from prison and the third affidavit was signed several months prior to his release from prison. Mangum v. State, 333 So. 3d 634, 2022 Miss. App. LEXIS 40 (Miss. Ct. App. 2022).

Appellant's post-conviction relief motion was not excepted from the procedural time-bar because his ineffective assistance of counsel claim on the ground that counsel failed to object to his sentence was without merit; appellant was not prejudiced by the circuit court's imposing a more lenient sentence for his conviction for possession of a controlled substance while incarcerated, and appellant's ineffective assistance of counsel allegations were supported only by his own affidavit. Hunt v. State, 312 So. 3d 1233, 2021 Miss. App. LEXIS 104 (Miss. Ct. App. 2021).

7. Newly discovered evidence.

Circuit court did not abuse its discretion in dismissing appellant's postconviction relief (PCR) motions because the motions were barred by both the statute of limitations and the successive-motions bar, as they were his sixth and seventh PCR motions and they were filed 36 years after his murder conviction. There was not a newly discovered evidence exception because, since the three affiants were known to appellant at the time of his arrest and his guilty plea, the evidence could have been reasonably discovered at the time of his guilty plea. Mangum v. State, 333 So. 3d 634, 2022 Miss. App. LEXIS 40 (Miss. Ct. App. 2022).

Circuit court properly dismissed the postconviction relief petition because, when appellant pled guilty, he waived his right to later contest the search warrant or evidence obtained through its execution. Regardless, the first page of the search warrant was contained in the record, there was nothing in the record justifying why any contention regarding the search warrant could not have been raised within three years of appellant's guilty plea, and there was no evidence to explain the near-decade lapse in presenting the affidavit from his ex-wife (claiming she never saw a search warrant). Bevalaque v. State, 337 So. 3d 691, 2022 Miss. App. LEXIS 126 (Miss. Ct. App. 2022).

Because appellant filed his second postconviction relief (PCR) motion more than three years after his conviction, the motion was, on its face, properly denied as untimely and, since it was his second PCR motion it was barred as successive. The

statements given by the codefendants were not newly discovered evidence and were suspicious and impeachable statements that would not have warranted a new trial. Pipkin v. State, — So. 3d —, 2022 Miss. App. LEXIS 172 (Miss. Ct. App. May 24, 2022).

Appellant's post-conviction collateral relief motion was procedurally barred as a successive motion with no exceptions because his due process rights were not violated by not being able to confront a witness based on "new evidence" in an unsworn affidavit from a minor child; the information contained in the affidavit was speculative at best, the statements were not sworn to, and appellant had called several witnesses but failed to call the child when he had an opportunity to do so. Britton v. State, 313 So. 3d 1056, 2021 Miss. App. LEXIS 124 (Miss. Ct. App. 2021).

Regardless of whether some or all of appellant's evidence was "new," the trial court considered all of the evidence, and its finding that it would probably not produce a different result in a new trial was not clearly erroneous, and it properly denied appellant's post-conviction relief (PRC) motion; with respect to whether short falls could cause fatal injuries, the testimony at the PCR hearing was not materially different from the trial testimony. Shelby v. State, 311 So. 3d 613, 2020 Miss. App. LEXIS 433 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 830, 2021 Miss. LEXIS 41 (Miss. 2021).

Trial court did not clearly err by finding that the testimony of appellant's experts would not probably not produce a different result because the evidence at the post-conviction relief hearing indicated that a majority of practicing physicians continue to accept "shaken baby syndrome" (SBS) or abusive head trauma (AHT) as valid diagnoses; the "debate" and "difference of opinion" regarding SBS and AHT existed at the time of the defendant's trial. Shelby v. State, 311 So. 3d 613, 2020 Miss. App. LEXIS 433 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 830, 2021 Miss. LEXIS 41 (Miss. 2021).

11. Timeliness.

Circuit court properly found that petitioner's postconviction collateral relief motion was time-barred given judicial precedent that the claim of an involuntary guilty plea was subject to such time bar, and petitioner filed his motion six-and-a-half years after he was sentenced. Crockett v. State, 334 So. 3d 1232, 2022 Miss. App. LEXIS 77 (Miss. Ct. App. 2022).

Petitioner's 2019 postconviction relief (PCR) motion was untimely because it was filed over eight years after his conviction. Further, because it was a successive motion and was based on grounds for relief that the appellate court had previously denied, his motion was successive-writ barred and precluded by the doctrine of res judicata. Davis v. State, 335 So. 3d 1108, 2022 Miss. App. LEXIS 91 (Miss. Ct. App. 2022).

PCR motion was properly denied as to a 2006 felony DUI conviction as the claim was filed 13 years after the conviction and, thus, it was too late. Porras v. State, — So. 3d —, 2022 Miss. App. LEXIS 120 (Miss. Ct. App. Apr. 19, 2022).

Circuit court properly denied defendant's second motion for post-conviction relief without holding an evidentiary hearing based on the successive-motions bar and the statute of limitations of the Uniform Post-Conviction Collateral Relief Act because the record revealed no reason why defendant was prevented from timely asserting his claim for ineffective assistance of counsel, his claim did not involve any exceptional or extraordinary circumstances, and the Equal Protection Clause was not violated by enforcing a post-conviction statute of limitations that applied equally to all defendants. Smith v. State, 334 So. 3d 1199, 2021 Miss. App. LEXIS 394 (Miss. Ct. App. 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 86 (Miss. 2022).

Because the mandate in petitioner's direct appeal issued in 1999, unless excepted, his petition was barred as untimely; because petitioner presented no "arguable basis" for his claims, his application for leave to proceed in the trial court was denied. Anderson v. State, — So. 3d —, 2021 Miss. LEXIS 77 (Miss. Mar. 19, 2021).

Appellant's post-conviction relief (PCR) motion was time-barred because the circuit court sentenced him on July 2, 2012,

and the circuit court's sentencing order was entered on that same day, but appellant filed his PCR motion on July 26, 2019, over four years too late. Hunt v. State, 312 So. 3d 1233, 2021 Miss. App. LEXIS 104 (Miss. Ct. App. 2021).

Appellant's post-conviction relief motion was not excepted from the procedural time-bar because even if his sentence for possession of a controlled substance in a correctional facility was "illegal" in any way, he failed to demonstrate that his fundamental rights were violated by the circuit court's imposition of that sentence; given the sentence's more lenient terms, appellant did not suffer any fundamental unfairness from the illegal sentence, nor were his fundamental rights violated. Hunt v. State, 312 So. 3d 1233, 2021 Miss. App. LEXIS 104 (Miss. Ct. App. 2021).

Appellant's post-conviction relief motion was not excepted from the procedural time-bar because his sentence for possession of a controlled substance while incarcerated was plainly more lenient than what a legal sentence would have been, and thus, any purported error on the circuit court's part in imposing appellant's sentence was harmless. Hunt v. State, 312 So. 3d 1233, 2021 Miss. App. LEXIS 104 (Miss. Ct. App. 2021).

In an action for post-conviction relief, appellant failed to offer any evidence to substantiate any extraordinary circumstance that would explain his failure to assert his claims within the statutory three-year time limitation or to overcome the successive-writ bar and thus, the trial court did not abuse its discretion in denying appellant's post-conviction relief motion. Figueroa v. State, 319 So. 3d 1151, 2020 Miss. App. LEXIS 642 (Miss. Ct. App. 2020), cert. dismissed, 318 So. 3d 484, 2021 Miss. LEXIS 163 (Miss. 2021).

12. Successive writs.

Petitioner's post-conviction claims were procedurally barred because the motion was filed outside the one-year filing period, the motion was subject to the successive writ bar, petitioner was prohibited by res judicata from raising claims that had been addressed already in prior proceedings, and he waived claims and issues that were not previously raised, and no exception to those procedural bars applied. Knox v. State, — So. 3d —, 2022 Miss. LEXIS 69 (Miss. Mar. 8, 2022).

Appellant's post-conviction collateral relief motion was procedurally barred as a successive motion with no exceptions because appellant was not innocent of the alleged crimes that resulted in his post-release supervision being revoked; there was a sufficient showing that he more likely than not committed the crimes based on the investigator's testimony, the investigation, and through documentation of appellant's text and Facebook messages Britton v. State, 313 So. 3d 1056, 2021 Miss. App. LEXIS 124 (Miss. Ct. App. 2021).

Appellant's post-conviction collateral relief motion was procedurally barred as a successive motion with no exceptions because appellant's due process rights were not violated when his phone was seized; the record supported an investigator's search warrant affidavit, which stated that appellant had been inappropriately texting minor children. Britton v. State, 313 So. 3d 1056, 2021 Miss. App. LEXIS 124 (Miss. Ct. App. 2021).

Petitioner's application for leave to proceed in the trial court was denied because it was barred by time and as a successive application; notwithstanding the procedural bars, the claims raised in the application for leave were without merit because the filing was frivolous. Brown v. State, — So. 3d —, 2020 Miss. LEXIS 12 (Miss. Jan. 29, 2020).

15. Double jeopardy.

Circuit court properly dismissed the postconviction relief petition because there was no double jeopardy violation since the state presented multiple disks and devices that each individually warranted a charge of child exploitation. Also, appellant admitted that he possessed and transmitted multiple images of children, he pled guilty to multiple charges of child exploitation during his plea colloquy, and he did not raise an issue or demonstrate confusion with the charges being presented against him at the time of his plea. Bevalaque v. State, 337 So. 3d 691, 2022 Miss. App. LEXIS 126 (Miss. Ct. App. 2022).

§ 99-39-7. Filing motion in trial court; filing motion to proceed in trial court with supreme court.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
3. Habeas corpus.
4. Ineffective assistance of counsel.
6. Jurisdiction.

1. In general.

Because petitioner appealed his conviction, he had to petition the Mississippi Supreme Court for leave to file a postconviction relief motion, which action had to be taken within three years of the final decision on petitioner's appeal. Mosley v. State, 307 So. 3d 1261, 2020 Miss. App. LEXIS 678 (Miss. Ct. App. 2020).

3. Habeas corpus.

Circuit court properly viewed defendant's habeas corpus petition as a post-conviction collateral relief motion because post-conviction use of habeas corpus was repealed and a motion framework was implemented specifically for post-conviction collateral review of challenges to convictions or sentences, as opposed to pre-conviction challenges regardless of how defendant denominated or characterized the pleading. Alexander v. State, 335 So. 3d 577, 2021 Miss. App. LEXIS 301 (Miss. Ct. App.), op. withdrawn, sub op., — So. 3d —, 2021 Miss. App. LEXIS 511 (Miss. Ct. App. 2021).

4. Ineffective assistance of counsel.

Record was inadequate to allow the appellate court to make a finding on defendant's constitutional claim of ineffective assistance of counsel, and the appellate court's review of the record did not affirmatively show that defendant's representation was ineffective. However, the appellate court concluded defendant should be given the opportunity to make a record on the issue in a properly filed application for leave to file a motion for post-conviction relief. Hinton v. State, 311 So. 3d 1213, 2020 Miss. App. LEXIS 526 (Miss. Ct. App. 2020), cert. denied, 310 So. 3d 831, 2021 Miss. LEXIS 43 (Miss. 2021).

Postconviction relief petition was denied because the defendant did not receive ineffective assistance of counsel. The purported meager mitigating evidence presented at trial was less of function of trial counsel's deficient performance than a product of its nonexistence and counsel did not fail to communicate a plea offer because petitioner's trial counsel and the state made multiple representations to the trial court that there was no plea offer. Evans v. State, 294 So. 3d 1152, 2020 Miss. LEXIS 72 (Miss. 2020).

6. Jurisdiction.

Circuit court was without jurisdiction to rule on defendant's post-conviction collateral relief motion motion because defendant failed to obtain the required permission from the Supreme Court of Mississippi to file the motion. Furthermore, there was a final judgment and sentence entered in defendant's case as the convictions and sentences terminated the litigation and defendant's appeal was not interlocutory but was a direct appeal of the judgment of conviction and sentence and from the denial of defendant's motion for new trial. Alexander v. State, 2021 Miss. App. LEXIS 301 (Miss. Ct. App. July 27, 2021).

Appellant's filings for an order to show cause were successive motions for post-conviction relief, and thus, the circuit court lacked jurisdiction to consider them; because appellant pleaded guilty and could not directly appeal his convictions and sentences, the supreme court would not have jurisdiction to consider any applications for leave to proceed in the trial court. Nance v. State, 327 So. 3d 1089, 2021 Miss. App. LEXIS 389 (Miss. Ct. App. 2021).

Circuit court lacked jurisdiction over defendant's petition, which was a pleading cognizable under the Uniform Post-Conviction Collateral Relief Act because defendant was required to seek the Mississippi Supreme Court's leave to proceed

on his request for PCR in the circuit court, but the Supreme Court denied defendant's January 2019 application for leave to proceed with his PCR motion in the circuit court, and he had not filed an application with the Supreme Court since that time. Greer v. State, 337 So. 3d 233, 2021 Miss. App. LEXIS 408 (Miss. Ct. App. 2021), cert. denied, 336 So. 3d 651, 2022 Miss. LEXIS 112 (Miss. 2022).

Because petitioner's motion for post-conviction relief (PCR) was filed while his direct appeal was pending, his request for PCR relief was premature, plus he failed to seek leave from the supreme court before filing his PCR motion in the circuit court; therefore, the circuit court's dismissal of the PCR motion was affirmed, as the circuit court lacked jurisdiction to reach the merits of his claim. Williams v. State, 296 So. 3d 137, 2020 Miss. App. LEXIS 18 (Miss. Ct. App. 2020). Fact that the state supreme court granted appellee leave to proceed did not give appellee an unfettered right to pres- ent claims not alleged in the post-convic- tion motion, and the court's grant of leave to amend her motion to assert a new claim was circumscribed by statutory jurisdic- tional requirements. As appellee did not first obtain leave to challenge the State's failure to instruct the jury, the circuit court lacked authority to adjudicate the amended motion and allow appellee to amend her PCR motion to assert a new claim. State v. Childs, 309 So. 3d 1, 2020 Miss. App. LEXIS 169 (Miss. Ct. App. 2020), cert. denied, 309 So. 3d 450, 2021 Miss. LEXIS 75 (Miss. 2021).

§ 99-39-11. Judicial examination of original motion; dismissal; filing answer; court ordered testing of biological evidence.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Ineffective assistance of counsel.
6. Evidentiary hearing.
12. Dismissal.
15. Evidence.

1. In general.

Circuit court did not err in failing to require the state to file a written response to the postconviction collateral relief motion where the successor judge ultimately required the state to appear for a hearing. Porras v. State, — So. 3d —, 2022 Miss. App. LEXIS 120 (Miss. Ct. App. Apr. 19, 2022).

Circuit court properly dismissed defendant's petition for postconviction collateral relief because he failed to show that he was entitled to any relief where his petition—filed more than 13 years after the judgment of conviction was entered—was time barred, his sentence was consistent with the state's plea offer, defendant's guilty plea was knowingly, intelligently, and voluntarily made, his sentence was presumptively valid and not violative of a fundamental, constitutional right, and the inquiries into defendant's juvenile record were made in order to impeach his mother's credibility after defense counsel opened the door during direct examination. Harris v. State, 303 So. 3d 1, 2020 Miss. App. LEXIS 4 (Miss. Ct. App.), cert. denied, 302 So. 3d 644, 2020 Miss. LEXIS 350 (Miss. 2020).

2. Ineffective assistance of counsel.

Circuit court properly dismissed defendant's motion for post-conviction relief because the defense attorney's failure to object to the indictment did not constitute ineffective assistance of counsel; the voyeurism statute did not require that the person be a "male"; the indictment properly tracked the language of the statute, included the essential elements of voyeurism, and sufficiently informed defendant of the charges against him. Parks v. State, 326 So. 3d 505, 2021 Miss. App. LEXIS 361 (Miss. Ct. App. 2021).

Circuit court properly dismissed defendant's motion for post-conviction relief because defendant did not establish that

counsel failed to conduct any pre-trial investigation; beyond vague assertions, defendant did not substantiate his claim with any supporting affidavits or facts. Parks v. State, 326 So. 3d 505, 2021 Miss. App. LEXIS 361 (Miss. Ct. App. 2021).

Circuit court properly dismissed defendant's motion for post-conviction relief because defendant did not plead any specific facts demonstrating any deficiency by counsel for failing to argue the violation of his right to a speedy trial; there were three agreed orders of continuance. Parks v. State, 326 So. 3d 505, 2021 Miss. App. LEXIS 361 (Miss. Ct. App. 2021).

6. Evidentiary hearing.

Trial court properly dismissed an inmate's PCR motion for lack of jurisdiction because the trial court did not have jurisdiction to review the revocation of the inmate's parole imposed on him by another county's circuit court, and the inmate failed to provide an adequate record for evaluation of his ineffective assistance claim. Jiles v. State, 341 So. 3d 988, 2022 Miss. App. LEXIS 23 (Miss. Ct. App.), cert. denied, 339 So. 3d 795, 2022 Miss. LEXIS 177 (Miss. 2022).

Because the circuit court judge plainly stated that she reviewed appellant's post-conviction collateral relief motion and authorities, as well as the transcript from the plea proceeding, prior to issuing her ruling, there were no "extraordinary circumstances" present that would have necessitated an evidentiary hearing. Watson v. State, 337 So. 3d 672, 2021 Miss. App. LEXIS 420 (Miss. Ct. App. 2021), cert. denied, 338 So. 3d 127, 2022 Miss. LEXIS 123 (Miss. 2022).

Allegedly undisclosed information was not exculpatory in the sense that it did not provide evidence that defendant was actually innocent but only that a possible Miranda violation would have supported a motion to suppress defendant's confession; by entering her guilty plea, petitioner waived her claim of a Brady violation and no hearing was required on this issue. Wilkerson v. State, 307 So. 3d 1231, 2020 Miss. App. LEXIS 644 (Miss. Ct. App. 2020).

Trial court did not err by denying defendant's postconviction collateral relief motion without an evidentiary hearing because a review of defendant's indictment, signed plea petition, and sworn colloquy provided the trial court with ample evidence to determine that his motion lacked merit. Carter v. State, 313 So. 3d 495, 2020 Miss. App. LEXIS 118 (Miss. Ct. App. 2020), cert. denied, 312 So. 3d 729, 2021 Miss. LEXIS 81 (Miss. 2021).

12. Dismissal.

Trial court properly dismissed an inmate's PCR motion for lack of jurisdiction because the trial court did not have jurisdiction to review the revocation of the inmate's parole imposed on him by another county's circuit court, and the inmate failed to provide an adequate record for evaluation of his ineffective assistance claim. Jiles v. State, 341 So. 3d 988, 2022 Miss. App. LEXIS 23 (Miss. Ct. App.), cert. denied, 339 So. 3d 795, 2022 Miss. LEXIS 177 (Miss. 2022).

15. Evidence.

As the plain language of Miss. Code Ann. § 99-39-11 grants authority to the circuit court to fully oversee the DNA testing and fingerprint analysis and to order additional testing if the petitioner meets his required burden, the circuit court had the authority to decide defendant's motion to transfer evidence gathered from the crime scene of two murders to a different specialized lab for additional advanced DNA testing. Manning v. State, — So. 3d —, 2022 Miss. LEXIS 175 (Miss. June 30, 2022).

§ 99-39-19. Evidentiary hearing; summary judgment.

JUDICIAL DECISIONS

6. Procedure.

Lower court's failure to provide an evidentiary hearing was not error where the submitted transcript revealed no coercion to plead guilty. Crockett v. State, 334 So. 3d 1232, 2022 Miss. App. LEXIS 77 (Miss. Ct. App. 2022).

§ 99-39-21. Procedural waiver of objections, defenses, claims; collateral estoppel; res judicata; burden of proof.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
3. Procedural bar.
6. Res judicata.

1. In general.

Circuit court properly dismissed defendant's petition for postconviction collateral relief because he failed to show that he was entitled to any relief where his petition—filed more than 13 years after the judgment of conviction was entered—was time barred, his sentence was consistent with the state's plea offer, defendant's guilty plea was knowingly, intelligently, and voluntarily made, his sentence was presumptively valid and not violative of a fundamental, constitutional right, and the inquiries into defendant's juvenile record were made in order to impeach his mother's credibility after defense counsel opened the door during direct examination. Harris v. State, 303 So. 3d 1, 2020 Miss. App. LEXIS 4 (Miss. Ct. App.), cert. denied, 302 So. 3d 644, 2020 Miss. LEXIS 350 (Miss. 2020).

3. Procedural bar.

Petitioner's post-conviction claims were procedurally barred because the motion was filed outside the one-year filing period, the motion was subject to the successive writ bar, petitioner was prohibited by res judicata from raising claims that had been addressed already in prior proceedings, and he waived claims and issues that were not previously raised, and no exception to those procedural bars applied. Knox v. State, — So. 3d —, 2022 Miss. LEXIS 69 (Miss. Mar. 8, 2022).

Although procedurally barred, there was no error by the trial court in sentencing appellant as a habitual offender because the transcript from his 2011 sentencing hearing reflected that in support of the habitual-offender portion of appellant's indictment, the state offered proof of three prior convictions for violent offenses: aggravated assault, gratification of lust, and the 1991 sexual battery conviction. Ellis v. State, — So. 3d —, 2022 Miss. App. LEXIS 194 (Miss. Ct. App. June 7, 2022).

6. Res judicata.

In petitioner's death penalty case, his intellectual-disability claim was barred because he did not demonstrate a novel claim or a sudden reversal of law relative to the issue that would exempt it from the procedural bar of res judicata; petitioner's request for leave to proceed in the trial court with the intellectual-disability claim was not well-taken because he failed to present a substantial showing of the denial of a state or federal right. Dickerson v. State, — So. 3d —, 2021 Miss. LEXIS 92 (Miss. Apr. 8, 2021).

Defendant was not entitled to postconviction relief because his petition was time barred and barred as a successive writ, his

claims were barred under the doctrine of res judicata since they were raised before, he failed to present an arguable basis for his claims to warrant an exception to the procedural bars, and his successive application was frivolous. Young v. State, — So. 3d —, 2020 Miss. LEXIS 40 (Miss. Feb. 19, 2020).

§ 99-39-23. Conduct of evidentiary hearing; right to counsel; finality of order as bar to subsequent motions; burden of proof; appointment of postconviction counsel in death penalty cases.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Evidentiary hearing, generally.
3. —Advising defendant of rights upon guilty plea.
8. Successive writ.
11. Relief denied.

1. In general.

Although the underlying physical evidence, the medical and autopsy records, remained the same, changes in experts' scientific understanding on issues such as bitemark analysis and shaken baby syndrome might constitute newly discovered evidence, excepting such claims from procedural bars of the Uniform Post-Conviction Collateral Relief Act; the court reversed and remanded for the trial court to conduct an evidentiary hearing and allow petitioner to provide expert testimony on this issue. Wilkerson v. State, 307 So. 3d 1231, 2020 Miss. App. LEXIS 644 (Miss. Ct. App. 2020).

Video evidence containing the alleged Miranda violation was not of such nature that it would be practically conclusive that, if it had been introduced at trial, it would have caused a different result in the conviction or sentence; therefore, the court found no additional exception to the procedural bars based upon the discovery of the videotape by postconviction relief counsel. Wilkerson v. State, 307 So. 3d 1231, 2020 Miss. App. LEXIS 644 (Miss. Ct. App. 2020).

Defendant's conviction for armed robbery was reversed because the post conviction court failed to address all the issues and evidence presented by erroneously concluding that testimony of another's confessions were inadmissible at a new trial and by not addressing defendant's Brady violation challenge. Hughes v. State, 309 So. 3d 542, 2020 Miss. App. LEXIS 40 (Miss. Ct. App. 2020).

2. Evidentiary hearing, generally.

Circuit court's decision to deny postconviction relief was not clearly erroneous because there was no evidence appellant attempted to exercise his right to present witness testimony at the evidentiary hearing; thus, the circuit court did not err by refusing to allow appellant to present witness testimony at the evidentiary hearing. Magee v. State, — So. 3d —, 2021 Miss. App. LEXIS 386 (Miss. Ct. App. Sept. 21, 2021), rev'd, 340 So. 3d 297, 2022 Miss. LEXIS 157 (Miss. 2022).

There was no abuse of discretion in denying appellant's motion for a continuance pending appointment of counsel for the evidentiary hearing because the record failed to reflect a need for appointment of counsel. Magee v. State, — So. 3d —, 2021 Miss. App. LEXIS 386 (Miss. Ct. App. Sept. 21, 2021), rev'd, 340 So. 3d 297, 2022 Miss. LEXIS 157 (Miss. 2022).

3. —Advising defendant of rights upon guilty plea.

Circuit court's decision to deny postconviction relief was not clearly erroneous

because while the circuit court could have erred by stating that what appellant was told by his attorney was none of the circuit court's business, any failure to address the claim was not reversible error; in its written order, the circuit court stated the record reflected that appellant was questioned thoroughly as to whether he understood his rights and all implications of the plea and sentencing proceedings. Magee v. State, — So. 3d —, 2021 Miss. App. LEXIS 386 (Miss. Ct. App. Sept. 21, 2021), rev'd, 340 So. 3d 297, 2022 Miss. LEXIS 157 (Miss. 2022).

8. Successive writ.

Petitioner's 2019 postconviction relief (PCR) motion was untimely because it was filed over eight years after his conviction. Further, because it was a successive motion and was based on grounds for relief that the appellate court had previously denied, his motion was successive-writ barred and precluded by the doctrine of res judicata. Davis v. State, 335 So. 3d 1108, 2022 Miss. App. LEXIS 91 (Miss. Ct. App. 2022).

Appellant's post-conviction collateral relief (PCR) motion was procedurally barred as a successive motion because appellant's second PCR motion challenged similar issues that he raised in his first PCR motion. Britton v. State, 313 So. 3d 1056, 2021 Miss. App. LEXIS 124 (Miss. Ct. App. 2021).

Appellant's filings for an order to show cause were successive motions for post-conviction relief, and thus, the circuit court lacked jurisdiction to consider them; because appellant pleaded guilty and could not directly appeal his convictions and sentences, the supreme court would not have jurisdiction to consider any applications for leave to proceed in the trial court. Nance v. State, 327 So. 3d 1089, 2021 Miss. App. LEXIS 389 (Miss. Ct. App. 2021).

Circuit court properly denied defendant's second motion for post-conviction relief without holding an evidentiary hearing based on the successive-motions bar and the statute of limitations of the Uniform Post-Conviction Collateral Relief Act because the record revealed no reason why defendant was prevented from timely asserting his claim for ineffective assistance of counsel, his claim did not involve any exceptional or extraordinary circumstances, and the Equal Protection Clause was not violated by enforcing a post-conviction statute of limitations that applied equally to all defendants. Smith v. State, 334 So. 3d 1199, 2021 Miss. App. LEXIS 394 (Miss. Ct. App. 2021), cert. denied, — So. 3d —, 2022 Miss. LEXIS 86 (Miss. 2022).

11. Relief denied.

Defendant failed to show why he could not have obtained the 911 recording prior to pleading guilty, and he could not meet his burden of showing that his second post-conviction relief motion was excepted from the statutory bar on successive motions; defendant was not entitled to an evidentiary hearing because his motion was subject to the successive-motions bar, and denial of a speedy trial was not reversible error on its own in Mississippi. Ford v. State, 336 So. 3d 1146, 2022 Miss. App. LEXIS 113 (Miss. Ct. App. 2022).

Circuit court did not err in denying petitioner's motion for appointment of counsel to represent him at the postconviction collateral relief (PCR) hearing where he had not provided any explanation for why he needed counsel in his motion for appointment of counsel. Porras v. State, — So. 3d —, 2022 Miss. App. LEXIS 120 (Miss. Ct. App. Apr. 19, 2022).

Denial of defendant's post-conviction motion was proper as it was supported by substantial evidence and was not clearly erroneous because defendant had not met his burden to prove that the result of his original trial would have been any different as recanted testimony was found to have been totally fabricated and defendant's convictions were supported by other evidence, including phone records and eyewitness testimony. Roberson v. State, — So. 3d —, 2022 Miss. App. LEXIS 215 (Miss. Ct. App. June 28, 2022).

§ 99-39-27. Application to Supreme Court for leave to proceed in trial court; grant of relief; dismissal or denial as res judicata.

JUDICIAL DECISIONS

ANALYSIS

2. Dismissal or denial of application.
4. Successive petitions.

2. Dismissal or denial of application.

Petitioner's post-conviction claims were procedurally barred because the motion was filed outside the one-year filing period, the motion was subject to the successive writ bar, petitioner was prohibited by res judicata from raising claims that had been addressed already in prior proceedings, and he waived claims and issues that were not previously raised, and no exception to those procedural bars applied. Knox v. State, — So. 3d —, 2022 Miss. LEXIS 69 (Miss. Mar. 8, 2022).

4. Successive petitions.

Because petitioner presented no "arguable basis" for his claims, his application for leave to proceed in the trial court was denied; petitioner filed numerous prior petitions for post-conviction relief, which had been rejected, and thus, his petition was successive. Anderson v. State, — So. 3d —, 2021 Miss. LEXIS 77 (Miss. Mar. 19, 2021).